

CONTRACT #5
RFS # 331.034-237

Department of Education

VENDOR:
Business Information Group

RECEIVED

APR 22 2005



FISCAL REVIEW

PHIL BREDESEN
GOVERNOR

STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
6th FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

LANA C. SEIVERS, Ed.D.
COMMISSIONER

TO: M.D. Goetz, Jr., Commissioner
Department of Finance and Administration

FROM: Lana C. Seivers

A handwritten signature in cursive script, reading "Lana C. Seivers", is written over the printed name.

DATE: April 18, 2005

SUBJECT: Amendment #2 to contract FA-04-15744-00 with Business Information Group
RFS Number 331.03-237-04 331.034-237

This requested amendment is being submitted after the requested 60 day window prior to the amendment start date. The primary reason for the delay is the contract transition for the Gateway/End of Course contract. This contract went through an RFP in 2004 which resulted in a change in vendors from CTB McGraw-Hill to Pearson Educational Measurement. There was not any data to indicate what technical services would be required in changing our scanning, editing, scoring, and reporting procedures until we had completed the process. We completed the fall process on March 16th and completed this amendment immediately following. Your review and approval is appreciated.

1. The Department of Education requests to amend the current technical data processing, consulting and programming services as related to student test scanning, test scoring and report dissemination for the Competency, End-of-Course, Gateway, and Achievement tests.

The following is a description of the additional services the Department is required to secure in order to administer the TCAP Competency, End of Course (EOC), Gateway and Achievement tests:

- a. Competency test: extension allowing for the administration of the competency test twice a year over the next four years for special education students under the age of 22 working on a diploma.
- b. Scan sites: addition of two new field service offices in Columbia and Cleveland requiring two new scan sites for the Gateway/End of Course tests
- c. End of Course: addition of two new content areas for the End of Course assessments
- d. Contract transition: an RFP was released for the Gateway/End of Course assessments in 2004 which resulted in a contract award to a new vendor, Pearson Educational Measurement. This transition required changes in programming and processing covered under this contract.

2. **The need for the additional services emerge from redefined State policies (Competency and End of Course tests), a restructuring of field service offices across the State, and the change of vendor resulting from an RFP.**
 - A) Extension of Competency Test: Contract (FA-04-15744-00) includes technical services to administer the Competency test for , Spring, Summer June and Summer July in year 1. Amendment #1 added the Fall administration. The Rules of the State Board of Education (Rule 0520-1-.06 d.2.iv) stated that after September 1, 2004 the Competency test will no longer be administered. The Special Education Manual redefined this ruling in 2004 to continue offering the Competency test to students with disabilities through the age of 22. This amendment adds Fall and Spring administrations of the Competency Test for the remaining years of the contract to accommodate this population. These administrations will be at the same rate (\$16,000 per test administration) as stated in the contract.
 - B) Additional Scan Sites: In response to a Department initiative to provide better service to the systems, two additional Field Service Centers were established in Columbia and Cleveland. These centers provide resources to school systems for professional development, academic support, as well as assessment scoring for quick return of results for the Gateway and End of Course tests. Existing scan sites in Hamilton County, Memphis City, Knox County, Martin, Lexington, Nashville, Cookeville, Knoxville, and Johnson City provide systems with convenience of service delivery. The new scan site costs will be at the same rate as those contained in the contract (\$5,085 per site per test administration).
 - C) Additional content areas for End of Course: Contract (FA-04-15744-00) includes technical services for two End of Course content areas, English I and Math Foundations II. State Board of Education High School Examinations Policy states that there will be ten End of Course Assessments, three of these are Gateway Assessments and are provided for separately in this contract. The two content areas contained in this contract were operational at the time the contract was executed while the remaining five content areas were placed on a temporary hold. This amendment is to include two additional content areas, Physical Science and US History, leaving three on hold. The new content area costs will be at the same rate as those contained in the contract (\$5,691.5 each for year 2 with appropriate increases in subsequent years).
 - D) Contract transition: Contract (FA-00-13915-00) with CTB/McGraw-Hill which provided the development of the Gateway and EOC tests ended September 30, 2004. An RFP was released which resulted in a contract award (FA-05-16190-00) to a new vendor, Pearson Educational Measurement. This transition required changes in programming and processing covered under this contract. Cost of \$78,500 negotiated based upon number of hours and amount of programming required to make the transition.
3. Proposed contractor's principal owner: Dave McCoy, President of Business Information Group, LLC, 10215 Technology Drive, Suite LL1, Knoxville, TN 37932
4. N/A.

5. N/A

6. The current contract was awarded through the RFP process which provides a cost structure for the continuation of Competency and additional End-of-Course tests and services.

7. To remain in compliance with State policies and Federal law, the Department requests permission to amend the current contract (RFS 331.034-237) to technically support the Achievement, Competency, Gateway and End-of-Course testing programs.

The Department may face the following consequences if we are unable to contract for these additional services:

- law suits by the Special Education population for not providing the Competency test through age 22,
- inability to administer the additional two End of Course tests,
- inability to provide service in additional Field Service Offices,
- loss of \$1 million in federal funds for not providing Gateway test results.

REQUEST: NON-COMPETITIVE AMENDMENT

RECEIVED

APR 22 2005

FISCAL REVIEW

APPROVED

Commissioner of Finance & Administration

Date:

RFS #	331.03-237-04		
SERVICE :	Provide technical computer consulting and programming services as related to student test scanning, test scoring, and report dissemination.		
CONTRACT #	FA-04-15744-00	PROPOSED AMENDMENT #	2
CONTRACTOR :	Business Information Group		
CURRENT MAXIMUM LIABILITY :	\$6,357,000.00		
START DATE :	Original: 11-1-03	Amendment Start Date: 12-1-04	
CURRENT END DATE (including all options to extend) :	10-31-08		
MAXIMUM COST <u>WITH</u> PROPOSED AMENDMENT (including all options to extend) :	\$8,143,100.00		
END DATE <u>WITH</u> PROPOSED AMENDMENT (including all options to extend) :	10-31-08		
APPROVAL CRITERIA (select one) :			
<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state			
<input type="checkbox"/> only one uniquely qualified service provider able to provide the service			
ATTACHED DOCUMENTATION : (attach a written request on agency letterhead, signed and dated by the ACTUAL procuring agency head (signature by an authorized signatory will be accepted only in documented exigent circumstances); the request must reference the item numbers below and detail or attach documentation of each)			
1) description of the proposed additional service and amendment effects;			
2) explanation of need for the proposed amendment;			
3) name and address of contractor's principal owner(s) (not required if proposed contractor is a state education institution);			
4) documentation of OIR endorsement of the subject procurement request (required only if the service involves information technology);			
5) documentation of Department of Personnel endorsement of the subject procurement request (required only if the service involves training for state employees);			
6) description of procuring agency efforts to identify reasonable, competitive, procurement alternatives (rather than to use non-competitive negotiation); and			
7) justification of why the state should approve a Non-Competitive amendment.			

DRAFT

**AMENDMENT 2
TO CONTRACT FA-04-15744-01**

This contract, by and between the State of Tennessee, Department of Education, hereinafter referred to as the State, and Business Information Group, LLC, hereinafter referred to as the Contractor, is hereby amended as follows:

1. Delete Section C.1. in its entirety and insert the following in its place:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed eight million, one hundred forty-three thousand, one hundred dollars (\$8,143,100). The Service Rates in section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

2. Delete Section C3. Payment Methodology in its entirety and insert the following in its place:

C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service rates:

Exigent technical consulting services that are defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

JOB CLASSIFICATION

PAYMENT RATE PER HOUR YEARS 1-5

IT Positions

\$ 75.00/hr - maximum 100 hrs (\$7,500)
per test administration per year.

Non-IT Positions

\$ 60.00/hr - maximum 100 hrs (\$6,000)
per test administration per year

NOTE: The maximum amounts to be invoiced at a rate of \$75/hour for IT positions or \$60/hour for non-IT positions must be approved by the State prior to service rendered.

The Contractor shall not be compensated for travel time to the primary location of service provision.

For the provision of Technical and System Support, as described in Contract Section A, the Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State. All Service Rates shall be invoiced at the same hourly rates as those used for the above described exigent technical consulting services.

<u>Service Unit / Milestone</u>	<u>Amount (Year = Nov. 1 thru Oct. 31)</u>				
	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
<u>Technical/System Support</u>	<u>03-04</u>	<u>04-05</u>	<u>05-06</u>	<u>06-07</u>	<u>07-08</u>
1 Fall- Competency	N/A	16,000	16,000	16,000	16,000
2 Fall- End-of- Course	N/A	47,000	50,000	52,000	55,000
2a Fall- End-of- Course - 2 new content areas	N/A	113,830	119,830	125,830	132,630
3 Fall- Gateway	N/A	263,000	275,000	288,000	302,000
4 Spring- TCAP Achievement	175,000	179,000	187,000	196,000	205,000
5 Spring- TCAP ALT/ELL	60,000	63,000	66,000	70,000	73,000
6 Spring- End-of- Course	77,000	47,000	49,000	50,000	52,000
6a Spring- End-of- Course - 2 new content areas	N/A	113,830	119,430	125,030	131,430
7 Spring - Gateway	272,000	263,000	275,000	288,000	302,000
8 Spring- Accountability	60,000	63,000	66,000	70,000	73,000
9 Spring - Competency	16,000	16,000	16,000	16,000	16,000
10 Summer (June) - Competency	16,000	N/A	N/A	N/A	N/A
11 Summer (July) - Competency	16,000	N/A	N/A	N/A	N/A
12 Summer- End-of- Course	77,000	47,000	49,000	52,000	55,000

12a Summer- End-of-Course - 2 new content areas	N/A	113,830	119,430	125,830	132,630
13 Summer – Gateway	272,000	263,000	275,000	288,000	302,000
14 Off-site Scanning Services two new field service offices		30,510	30,510	30,510	30,510
15 Vendor Transition		78,500			
Annual Total	1,041,000	1,717,500	1,713,200	1,793,200	1,878,200
Maximum	8,143,100				

The Contractor shall submit monthly invoices for completed work, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated. Hourly rate invoices shall, at a minimum, include the name of each individual, the individual's job title, the number of hours worked during the period, the applicable Payment Rate, the total compensation requested for the individual, and the total amount due the Contractor for the period invoiced.

3. **Delete the first paragraph in Section A.1 under Scope of Services: The Contractor will provide software development and support of existing web-based and client/server software applications used in the processing of State assessment tests in its entirety and insert the following in its place:**

The standard platform for existing applications is located at State facilities.

The current production platform is:

- Web Server is a Compaq Proliant 5500, quad processor, 3 gig RAM, 1 9.1GB HD RAID 0, 3 18.2 GB HD RAID 5
 - Windows NT SP6
 - IIS 4.0
 - Crystal Reports 8.5
 - Active Reports
 - SSL 128 bit encryption
- Database Server – Dell PowerEdge 6300 1.5GB RAM 3 X 18GB HD Raid 5
 - SQL Server 7.0
- All applications interface with the Department's existing security application for maintaining and verifying authorized user access.
- Interface to CTB (contract period 5/1/03-4/30/08)
 - Three (3) Compaq Proliant 6000 Dual Processor 15GB memory; twelve 9.1GB H/D Raid 5
 - DLT Tape Library for backups
 - One (1) RISC 6000
- Interface to NCSPearson (contract period 8/1/04-10/31/08)
 - Software development that will allow BIG to read data provided by NCSPearson.

- Develop programs that will provide BIG with the abilities to process data provided by NCSPearson.
- Develop an export routine for NCSPearson.
- Develop an import routine for NCSPearson.
- Develop an interface program that will permit the translation of data from\to a Windows Platform to a Mainframe environment using terminal 3270 emulation using CICS.
- Implement a bridge that will facilitate routine editing and processing functionsf for NCSPearson

4. Delete the first paragraph in Section A.IV.3 under Field Scanning (Gateway and End-of-Course only) in its entirety and insert the following in its place:

Provide computer systems in the eleven (11) State regional offices to facilitate the agency's field scanning initiatives, including hardware and all system maintenance and software upgrades, in support of the field scanning locations across the State. The current configuration includes nine small footprint computers with Windows 2000, ScanTools II, and a custom scanning and .net data transfer application.

The other terms and conditions of this CONTRACT not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF:

BUSINESS INFORMATION GROUP, INC:

Ralph Parton, CHIEF FINANCIAL OFFICER

Date

DEPARTMENT OF EDUCATION:

LANA C. SEIVERS, COMMISSIONER

Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner


Date

COMPTROLLER OF THE TREASURY:

John G. Morgan, Comptroller of the Treasury

Date

CONTRACT SUMMARY SHEET

RFS Number:	331.034-237		Contract Number:	FA-04-15744-01		
State Agency:	EDUCATION		Division:	EVALUATION & ASSESSMENT		
Contractor			Contractor Identification Number			
BUSINESS INFORMATION GROUP, INC.			X	V-	41-2066752	
				C-		
Service Description						
PROVIDE TECHNICAL COMPUTER CONSULTING AND PROGRAMMING SERVICES AS RELATED TO STUDENT TEST SCANNING, TEST SCORING, AND REPORT DISSEMINATION						
Contract Begin Date			Contract End Date			
November 1, 2003			October 31, 2008			
Allotment Code	Cost Center	Object Code	Fund	Grant	Grant Code	Subgrant Code
331.03	475	83	25	on STARS		
FY	State Funds	Federal Funds	Interdepartmental Funds	Other Funding	Total Contract Amount Include ALL amendments	
04		\$1,057,000.00			\$1,057,000.00	
05		\$1,235,000.00			\$1,235,000.00	
06		\$1,292,000.00			\$1,292,000.00	
07		\$1,354,000.00			\$1,354,000.00	
08		\$1,419,000.00			\$1,419,000.00	
Total:		\$6,357,000.00			\$6,357,000.00	
CFDA Number:	84.369A		Check the box (below) ONLY if the answer is YES:			
State Fiscal Contact			Is the Contractor a SUBRECIPIENT? (per OMB A-133)			
Name:	MARY REEL, PROGRAM DIRECTOR		Is the Contractor a VENDOR? (per OMB A-133)			
Address:	7TH FLOOR ANDREW JOHNSON TOWER		Is the Fiscal Year Funding STRICTLY LIMITED?			
Phone:	615-532-3027		Is the Contractor on STARS?			
Procuring Agency Budget Officer Signature			Is the Contractor's FORM W-9 ATTACHED?			
			Is the Contractors Form W-9 Filed with Accounts?			
			Funding Certification			
COMPLETE FOR ALL AMENDMENTS (only)			Pursuant to T.C.A., Section 9-6-113, I, M.D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred. 4/2/04/03-			
	Base Contract & Prior Amendments	This Amendment ONLY				
End Date >	11/1/03	10/31/08				
FY:	04	\$928,000.00	\$129,000.00			
FY:	05	\$1,235,000.00	\$0.00			
FY:	06	\$1,292,000.00	\$0.00			
FY:	07	\$1,354,000.00	\$0.00			
FY:	08	\$1,419,000	\$0.00			
FY:						
Totals:	\$6,228,000.00	\$129,000.00				

JUN 14 2004

RECEIVED
2004 MAY 21 PM 1:55
COMPTROLLER'S OFFICE
OFFICE OF
MANAGEMENT SERVICES

**AMENDMENT 1
TO CONTRACT FA-04-15744-00**

This contract, by and between the State of Tennessee, Department of Education, hereinafter referred to as the State, and Business Information Group, LLC, hereinafter referred to as the Contractor, is hereby amended as follows:

1. Delete Section C.1. in its entirety and insert the following in its place:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed six million and three hundred fifty seven thousand dollars (\$6,357,000). The Service Rates in section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

2. Delete Section C3. Payment Methodology in its entirety and insert the following in its place:

C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service rates:

Exigent technical consulting services that are defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

JOB CLASSIFICATION

PAYMENT RATE PER HOUR YEARS 1-5

IT Positions

\$ 75.00/hr - maximum 100 hrs (\$7,500)
per test administration per year.

Year 1 - 10 Test Administrations
Years 2-5 - 9 Test Administrations per year

Non-IT Positions

\$ 60.00/hr - maximum 100 hrs (\$6,000)
per test administration per year

Year 1 - 10 Test Administrations
Years 2-5 - 9 Test Administrations per year

NOTE: The maximum amounts to be invoiced at a rate of \$75/hour for IT positions or \$60/hour for non-IT positions must be approved by the State prior to service rendered. The Contractor shall not be compensated for travel time to the primary location of service provision.

For the provision of Technical and System Support, as described in Contract Section A, the Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State.

<u>Service Unit / Milestone</u>		<u>Amount (Year = Nov. 1 thru Oct. 31)</u>				
		<u>03-01</u>	<u>04-01</u>	<u>05-01</u>	<u>06-01</u>	<u>07-01</u>
<u>Technical/System Support</u>		<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
1	Fall- Competency	\$16,000	N/A	N/A	N/A	N/A
2	Fall- End-of-Course 2	N/A	\$47,000	\$50,000	\$52,000	\$55,000
3	Fall- Gateway 3	N/A	\$263,000	\$275,000	\$288,000	\$302,000
84	Spring- TCAP Achievement	\$175,000	\$179,000	\$187,000	\$196,000	\$205,000
45	Spring- TCAP ALT/ELL	\$60,000	\$63,000	\$66,000	\$70,000	\$73,000
86	Spring- End-of-Course	\$77,000	\$47,000	\$49,000	\$50,000	\$52,000
87	Spring- Gateway	\$272,000	\$263,000	\$275,000	\$288,000	\$302,000
87	Spring- Accountability	\$60,000	\$63,000	\$66,000	\$70,000	\$73,000
98	Spring - Competency	\$16,000	N/A	N/A	N/A	N/A
108	Summer (June) -Competency	\$16,000	N/A	N/A	N/A	N/A
1110	Summer (July) - Competency	\$16,000	N/A	N/A	N/A	N/A
1211	Summer - End-of-Course	\$77,000	\$47,000	\$49,000	\$52,000	\$55,000
1312	Summer - Gateway	\$272,000	\$263,000	\$275,000	\$288,000	\$302,000

Online

The Contractor shall submit monthly invoices for completed work, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated. Hourly rate invoices shall, at a minimum, include the name of each individual, the individual's job title, the number of hours worked during the period, the applicable Payment Rate, the total compensation requested for the individual, and the total amount due the Contractor for the period invoiced.

3. Delete the State Contact from Section E.2. Communications and Contacts, and insert the following in its place:

The State:

Mary Reel, Evaluation and Assessment Director
Department of Education
Andrew Johnson Tower, 7th Floor
710 James Robertson Parkway
Nashville, TN 37243-0375
Phone: (615) 532-3027
Fax: (615) 532-7860
Email: Mary.Reel@state.tn.us

4. Add the following to Section A. Scope of Services and renumber any subsequent sections as necessary:

A.IV.3. c) Develop and implement additional programming to interface with ScanTools II that will enable "valid absences" to be recognized when scanned, thus eliminating unnecessary delays and/or stoppages in the scanning process.

5. Add the following to Section A. Scope of Services and renumber any subsequent sections as necessary:

A.V. f) Provide the State with disaster recovery protection and support of WinScore Data utilizing Legato NetWorker software as required by the TCAP Achievement contractor.

The other terms and conditions of this CONTRACT not amended hereby shall remain in full force and effect.


IN WITNESS WHEREOF:

BUSINESS INFORMATION GROUP, INC:


CHRISTOPHER L. SCRAGG, CHAIRMAN

5/9/04
Date


DEPARTMENT OF EDUCATION:


LANA C. SEIVERS, COMMISSIONER

5-3-04
Date

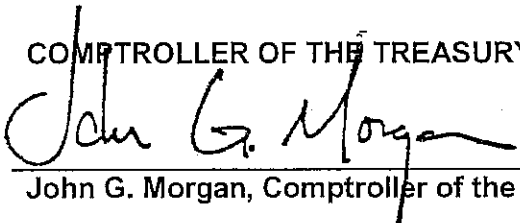
APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:


M. D. Goetz, Jr., Commissioner

MAY 21 2004
Date

COMPTROLLER OF THE TREASURY:


John G. Morgan, Comptroller of the Treasury

5-24-04
Date

New Contract

CONTRACT SUMMARY SHEET

RFS Number:	331.034-237	Contract Number:	FA-04-15744-01
State Agency:	EDUCATION	Division:	EVALUATION & ASSESSMENT
Contractor		Contractor Identification Number	
BUSINESS INFORMATION GROUP, INC. <i>LLC</i>		<input checked="" type="checkbox"/> X <input type="checkbox"/> V- <input type="checkbox"/> C-	621730292-00 41-2066752

Service Description

PROVIDE TECHNICAL COMPUTER CONSULTING AND PROGRAMMING SERVICES AS RELATED TO STUDENT TEST SCANNING, TEST SCORING, AND REPORT DISSEMINATION

Contract Begin Date	Contract End Date
November 1, 2003	October 31, 2008

Allotment Code	Cost Center	Object Code	Fund	Grant	Grant Code	Subgrant Code
331.03	475	83	25	on STARS		

FY	State Funds	Federal Funds	Interdepartmental Funds	Other Funding	Total Contract Amount Include ALL amendments
04		\$928,000.00	<div style="text-align: center;"> <p>OCR RELEASED</p> <p>NOV 24 2003</p> <p>TO ACCOUNTS</p> </div>		\$928,000.00
05		\$1,235,000.00			\$1,235,000.00
06		\$1,292,000.00			\$1,292,000.00
07		\$1,354,000.00			\$1,354,000.00
08		\$1,419,000.00			\$1,419,000.00
Total:		\$6,228,000.00			\$6,228,000.00

CFDA Number:	84.369A	Check the box (below) ONLY if the answer is YES:	
State Fiscal Contact		Is the Contractor a SUBRECIPIENT? (per OMB A-133)	
Name:	KAREN JENKINS, PROGRAM DIRECTOR	Is the Contractor a VENDOR? (per OMB A-133)	<input checked="" type="checkbox"/> X
Address:	7TH FLOOR ANDREW JOHNSON TOWER	Is the Fiscal Year Funding STRICTLY LIMITED?	<input checked="" type="checkbox"/> X
Phone:	615-532-3027	Is the Contractor on STARS?	<input checked="" type="checkbox"/> X
Procuring Agency Budget Officer Signature		Is the Contractor's FORM W-9 ATTACHED?	
<i>YES</i>		Is the Contractors Form W-9 Filed with Accounts?	<input checked="" type="checkbox"/> X

COMPLETE FOR ALL AMENDMENTS (only)		
End Date >	Base Contract & Prior Amendments	This Amendment ONLY
FY:		
FY:		
FY:		
FY:		
FY:		
FY:		
Totals:		

Funding Certification

Pursuant to T.C.A., Section 9-6-113, I, M.D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.

[Signature]

2003 NOV 20 AM 11:49

RECEIVED

COMPTROLLER'S OFFICE
OFFICE OF
MANAGEMENT SERVICES

PROCESSED

DEC - 1 2003

DIRECTOR OF ACCOUNTS

~~012~~
CONTRACT
BETWEEN THE STATE OF TENNESSEE,
Department of Education
AND
BUSINESS INFORMATION GROUP, INC.

This Contract, by and between the State of Tennessee, Department of Education, hereinafter referred to as the "State" and Business Information Group, Inc., hereinafter referred to as the "Contractor," is for the provision of technical computer consulting and programming services as related to student test scanning, test scoring, and report dissemination, as further defined in the "SCOPE OF SERVICES."

The Contractor is a For-Profit Corporation.

The Contractor's address is:
10215 Technology Drive, Suite LL1
Knoxville, TN 37933-1095

PO Box 20395

The Contractor's place of incorporation or organization is Tennessee.

A. SCOPE OF SERVICES:

I. The Contractor will provide software development and support of existing web-based and client/server software applications used in the processing of State assessment tests.

The standard platform for existing applications is located at State facilities.

The current production platform is:

- Web Server is a Compaq Proliant 5500, quad processor, 3 gig RAM, 1 9.1GB HD RAID 0, 3 18.2 GB HD RAID 5
 - Windows NT SP6
 - IIS 4.0
 - Crystal Reports 8.5
 - Active Reports
 - SSL 128 bit encryption
- Database Server – Dell PowerEdge 6300 1.5GB RAM 3 X 18GB HD Raid 5
 - SQL Server 7.0
- All applications interface with the Department's existing security application for maintaining and verifying authorized user access.
- Interface to CTB (contract period 5/1/03-4/30/08)
 - Three (3) Compaq Proliant 6000 Dual Processor 15GB memory; twelve 9.1GB H/D Raid 5
 - DLT Tape Library for backups
 - One (1) RISC 6000

The standard platform for new applications will be the same as for existing applications. Comparable development and test platforms exist.

The vendor may support and run the applications on the State's existing servers or on their own servers provided that those servers are located in a secured, controlled environment has adequate bandwidth to support peak processing volume, and the State standard backup and recovery procedures are followed. The State Standard backup and recovery procedures are as follows:

Policy 9.00 Disaster Recovery

Disaster recovery planning and the capability for implementing a recovery are required encompassing all critical data processing applications and their peripheral support activities.

REFERENCE:

Tennessee Code Annotated, Section 4-3-5501, effective May 10, 1994.

OBJECTIVES:

1. Ensure that all critical information systems can be recovered in the event of a disaster which disrupts any of the data processing facilities of the State.
2. Provide the capability to continue processing critical information systems, both centralized and departmental, in the event of a disaster.
3. Define the responsibilities of OIR and agency information system management in the development of a disaster recovery plan for critical information systems.

SCOPE:

The policy will apply to all Agency-level and Statewide systems.

IMPLEMENTATION:

Department of Finance & Administration, Office for Information Resources

1. Develop and recommend to agencies, the standards, procedures and guidelines necessary to assure recovery capabilities for the State's information systems.
2. Define the procedure for declaring a disaster.
3. Define criteria for an application to be defined as critical.
4. Provide an ongoing technical review of disaster recovery aids, tools, techniques and other methods to meet ongoing disaster recovery requirements.
5. Provide for an administrative review of disaster recovery considerations in light of technical, environmental, procedural or statutory changes which may occur.
6. Provide management and technical consulting support to agencies in fulfilling their disaster recovery roles.
7. Utilize disaster recovery software and create the centralized disaster recovery plan.
8. Provide centralized disaster recovery coordinator and alternate.

Agency Management

1. Responsible for establishing policies and procedures for the development of the agency's disaster recovery plan.
2. Provide an agency disaster recovery coordinator who will be responsible for ensuring that the agency's portion of the centralized plan and that the agency's individual plan allow the agency to recover their critical information systems.
3. Responsible for establishing recovery procedures for the peripheral activities required to continue the agency's critical production tasks.

Existing State testing applications to support are listed below. All are web-based with the exception of item 4, which is a client/server application. Applications include all required reporting capabilities.

1. Faculty Student Data entry program (Accountability from Achievement Test)
2. Online Ordering System for all State tests
3. Field Processing Application for Gateway/End of Course
4. Competency Editing System for Competency test
5. State web pages, as needed for all tests
6. Demographic Validation Report for Achievement, TCAP Alt/ELL, Gateway and End-of-Course
7. Report of Irregularity System for Competency, Achievement, Gateway and End-of-Course
8. Special Education/English Language Learner – TCAP Alt and TCAP ELL
9. Pre-coded Header System for Achievement, Gateway, End-of Course, Accountability

- II. The contractor must supply all required services for each test administration.
Preparation tasks must be performed prior to State test administration dates and scanning, scoring and processing of tests occurs after the administration dates listed

below. These dates can vary slightly from year to year. For historical test cycle student quantities, see Attachment 2.

2003 -2004 TCAP TESTING DATES

Test	Date
Gateway	December 9-11, 2003
End of Course	To be given within the last 10 days of instruction
Writing	February 3, 2004
Competency	February 23-27, 2004
Achievement	March 22 - April 9, 2004
End of Course	To be given within the last 10 days of instruction
Gateway	May 4-6, 2004
Competency	June 15-16, 2004
Competency	July 27-28, 2004
End of Course	To be given within the last 10 days of instruction
Gateway	July 20-22, 2004

III. The contractor will provide the following consultant and project management tasks in association with all State test administrations and processing, except Writing.

1. Project Management

Assist the State in managing the progress of each test through all administration and processing cycles.

- a) Provide performance evaluations during each test processing period to insure consistency in established standards.
- b) Work with the State's contracted test companies to proactively identify problems and solutions that will increase the level of function and accountability between the State and the test companies.

2. General Test Processing and Accountability Consulting

Provide the State with sound and aggressive business practices for the successful, technical implementation of State assessments and related services each year.

- a) Evaluate and improve the State's productivity, efficiency, cost of ownership and accountability.
- b) Evaluate, create and redefine test processing practices, solutions and support components as more efficient practices become apparent and available.
- c) Develop programs and services that continue to improve assessment functions for the State and between the State and the school districts, to include test processing procedures, turnaround times, reporting and accountability.
- d) Define, develop, deliver, manage and measure processing and programming problems and solutions to insure State requirements are continually met.
- e) Correlate data files with 4-digit numbers generated within Achievement Test processing and format data files to State specified configuration.

3. Logistical Consultation

Define and implement logistical practices that improve the components of test processing and the testing cycles.

- a) Review and improve logistics continuously in all areas of processing using State equipment which includes order entry, fulfillment, receiving,

preparation, scanning, processing, scoring, printing, shipping and invoicing for all State assessments.

- b) Identify flaws in practices and complete a risk/reward evaluation with reasonable solutions for implementation.

4. Quality Assurance

Maintain quality control sampling techniques in each area of State test processing to establish and maintain high levels of quality before, during and after processing.

- a) Develop quality assurance and operational test decks in conjunction with State staff and test contractors for each test administration.
- b) Work cooperatively with the State and test companies to insure quality control and assurance procedures are maintained, effective and compatible with all entities.

5. Helpdesk

Provide constant help desk services to support State personnel at both the State and regional level.

- a) Provide support through a variety of methods including 1-800 phone number, email and on-site technical and operational support.
- b) Provide support services to the State Monday through Friday 7:00am CST – 5:00pm CST. During test processing cycles provide onsite support services during all working hours and 24 hour a day on-call service.

6. Mainframe Operations

Provide personnel to perform mainframe operations that include data bridging, data scrubbing, data analysis, print queuing, Job Control Language programming and any other process needed to produce the agency's compiled data files and for maintaining district and school codes.

IV. The Contractor will provide scanner support, scan form design, and scanning programming for all State tests, except Writing.

The current scanners with workstations to support include:

- Four NCS 5000i scanners
- ScanTools II
- Compaq DeskPro P350 64MB with Windows NT 4.0 Workstation

1. Scan Form Design

Consult, develop and quality assure form proofs before the form is submitted to outside contractors for printing with the State concerning updated scan form designs on an as needed basis.

2. Scanning Programming

Develop and implement scanning programs for State scanners to accurately process and capture data from student answer documents for remote and on-site scanning.

- a) Install the developed software on each scanner prior to each test administration.
- b) Quality assure software scanning programs before test processing to maintain consistent standards.

3. Field Scanning (Gateway and End-of-Course only)

Provide computer systems in the State regional offices to facilitate the agency's field scanning initiatives, including hardware and all system maintenance and software upgrades, in support of the field scanning locations across the State. The current configuration includes nine small footprint computers with Windows 2000, ScanTools II, and a custom scanning and .net data transfer application.

- a) Provide the programming and monitoring needed to accurately translate captured data from field scanning into the data architecture of the test vendor in order to complete the data processing and scoring.

- b) Develop and provide improvements and upgrades to the field scanning software that is used to communicate with the central processing systems in Nashville at the Data Center.

V. Data Warehousing and Analytical Processing for all State tests, except Writing

- a) Provide the State with data warehousing services to support Online Analytical Processing (OLAP) applications. Warehouses and data marts must provide the State with 3 dimensional data sets that can be disaggregated from the State down to the student level.
- b) Provide analytical data reporting to the State upon request.
- c) Provide the State with a data archiving system to collect years of testing data and demographics, and stores this information in electronic form for later retrieval.
- d) Assure the data is in a secure environment and standard backup and recovery procedures are followed.
- e) Provide remote access to data to State personnel as requested.

VI. The Contractor will provide State and Regional training for each test administration, except Writing.

- a) Provide initial trainings and periodic refresher training, including a combination of on-site and regional step-by-step instruction with hands-on trainings, to State personnel to insure hardware, software, and test documents are handled appropriately and are processed effectively. Examples of, but not to be limited to, such trainings are provided below:
 - scanner operational procedures instruction on State equipment to efficiently operate and maintain the test processing systems on State hardware.
 - processing support and problem solving for test processing, data capture and scanner maintenance.
 - processing systems software instruction to insure effective test processing software utilization, which will include operating and maintaining the systems and hardware.
 - document handling and preparation training, including document repair techniques, to insure effective document scanning and data capture.
 - test irregularity procedures, which includes invalidating, omitting or suppressing test scores in conformation to specific criteria set forth by the State and test companies, and insuring irregularity standards are upheld through the test cycle and the final data files represent student assessment accurately.
 - data transfer software instruction to insure the scan files are accurate, transmitted securely to the State databases according to State schedules.
 - receiving, preparing and distributing procedures instruction, to include cutting of test documents, to insure answer documents are handled efficiently and properly for processing
- b) Provide updated documentation and procedural manuals to the State for all trainings, which may be used for reference and additional training methodologies.

VII. The Contractor will provide appropriately trained personnel to provide the needed services to the State for all State tests, except Writing.

- a) Provide non-technical (non-IT) and technical (IT) personnel with experience in technical support for and between entities for the purpose of processing a State test and providing assured practices, procedures and products that will support the State in test processing.
- b) Provide IT personnel who are adept in core languages including Microsoft SQL Server, Visual Basic, VB Script, ASP, VB.Net, ASP.Net, C++, C#, Crystal Reports, data warehousing and OLAP services. Microsoft and Cisco certified software engineers are preferred.
- c) Provide IT personnel who are familiar with the use of software architectures including, but not limited to: client/server, nTier, .Net web services, XML, desktop

applications, system services, distributed applications, COM+, message queue, NTLM, ADSI, NCS Scan Tools II, active directory and any other software that can be applied to the State test processing procedures and services to facilitate and enhance processing procedures on State equipment.

- d) During each test administration and processing, Personnel shall be based and shall perform 40-60% of their work at State-operated, maintained, and managed facilities. The State reserves the right to request on-site or off-site work, whichever is deemed to be in the best interest of the project at non-administration and non-processing periods.
- e) Commensurate with the needs of a given project, the State will provide personnel with office space, access to telephones, office supplies, workstations or terminals, and connections to the relevant State LAN/WAN and/or mainframe environment during the administration and processing periods and any other necessarily deemed blocks of time the vendor is on-site. The vendor will be responsible for access to the system using state authorized access points at all times from the off-site location(s) approved by the State of Tennessee.

VIII. The Contractor will provide exigency services as needed.

- a) Provide unanticipated services related to state tests and test processing with IT and or non-IT staff as needed. IT positions are defined as per sections A.VII.b and A.VII.c. Non-IT positions are defined as per section A.VII.a.
- b) Provide IT and non-IT staff to assist State staff with unanticipated problems related to state test processing. IT positions are defined as per sections A.VII.b and A.VII.c. Non-IT positions are defined as per section A.VII.a.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on November 1, 2003 and ending on October 31, 2008. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Six Million Two Hundred Twenty Eight Thousand Dollars (\$6,228,000.00). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the

satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service rates:

Exigent technical consulting services that are defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

JOB CLASSIFICATION

PAYMENT RATE PER HOUR YEARS 1-5

IT Positions

\$ 75.00/hr - maximum 100 hrs (\$7,500)
per test administration per year.
Year 1 - 10 Test Administrations
Years 2-5 - 9 Test Administrations per year

Non-IT Positions

\$ 60.00/hr - maximum 100 hrs (\$6,000)
per test administration per year
Year 1 - 10 Test Administrations
Years 2-5 - 9 Test Administrations per year

NOTE: The maximum amounts to be invoiced at a rate of \$75/hour for IT positions or \$60/hour for non-IT positions must be approved by the State prior to service rendered. The Contractor shall not be compensated for travel time to the primary location of service provision.

For the provision of Technical and System Support, as described in Contract Section A, the Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State.

<u>Service Unit / Milestone</u>		<u>Amount (Year = Nov. 1 thru Oct. 31)</u>				
<u>Technical/System Support</u>		<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
1	Fall- End-of-Course	N/A	\$47,000	\$50,000	\$52,000	\$55,000
2	Fall- Gateway	N/A	\$263,000	\$275,000	\$288,000	\$302,000
3	Spring- TCAP Achievement	\$170,000	\$179,000	\$187,000	\$196,000	\$205,000
4	Spring- TCAP ALT/ELL	\$60,000	\$63,000	\$66,000	\$70,000	\$73,000
5	Spring- End-of-Course	\$45,000	\$47,000	\$49,000	\$50,000	\$52,000
6	Spring- Gateway	\$250,000	\$263,000	\$275,000	\$288,000	\$302,000
7	Spring- Accountability	\$60,000	\$63,000	\$66,000	\$70,000	\$73,000
8	Spring - Competency	\$16,000	N/A	N/A	N/A	N/A
9	Summer (June) -Competency	\$16,000	N/A	N/A	N/A	N/A
10	Summer (July) - Competency	\$16,000	N/A	N/A	N/A	N/A
11	Summer - End-of-Course	\$45,000	\$47,000	\$49,000	\$52,000	\$55,000
12	Summer - Gateway	\$250,000	\$263,000	\$275,000	\$288,000	\$302,000

The Contractor shall submit monthly invoices for completed work, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated. Hourly rate invoices shall, at a minimum, include the name of each individual, the individual's job title, the number of

hours worked during the period, the applicable Payment Rate, the total compensation requested for the individual, and the total amount due the Contractor for the period invoiced.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least sixty (60) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive

jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under ***Tennessee Code Annotated***, Sections 9-8-101 through 9-8-407.

- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Karen Jenkins, Evaluation and Assessment Director
Department of Education
Andrew Johnson Tower, 7th Floor
710 James Robertson Parkway
Nashville, TN 37243-0375
Phone: (615) 532-3027
Fax: (615) 532-7860
Email: Karen.Jenkins@state.tn.us

The Contractor:

Christopher L. Scragg, Chairman
Business Information Group, Inc.
10215 Technology Drive, Suite LL1
PO Box 23095
Knoxville, TN 37933-1095
Phone: 865-777-1597
Fax: 865-777-1383
E-mail: chris.scragg@workgroup.net

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this contract, these items shall hereinafter be referred to as a "Breach."

a. Contractor Breach— The State shall notify Contractor in writing of a Breach.

- (1) In event of a Breach by Contractor, the state shall have available the remedy of Actual Damages and any other remedy available at law or equity.
- (2) Liquidated Damages— In the event of a Breach, the State may assess Liquidated Damages. The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Attachment 1 and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or other section of this Contract.

The State may continue to withhold the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the State exercises its option to declare a Partial Default, or the State terminates the Contract. The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Contractor shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.

- (3) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the

Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken

- (4) **Contract Termination**— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

- b. **State Breach**— In the event of a Breach of contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

- E.5. **Partial Takeover.** The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- E.6. **Annual Report and Audit.** The Contractor shall prepare and submit, within nine (9) months after the close of the reporting period, an annual report of its activities funded under this Contract to

the commissioner or head of the contracting agency, the Tennessee Comptroller of the Treasury, and the Commissioner of Finance and Administration. The annual report for any Contractor that receives \$300,000 or more in aggregate federal and state funding for all its programs shall include audited financial statements. All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Contractor may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit contract between the Contractor and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the *Audit Manual for Governmental Units and Recipients of Grant Funds* published by the Tennessee Comptroller of the Treasury. The Contractor shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Contractor shall be subject to the provisions relating to such fees contained in the prescribed contract form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the State Contracting Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.

E.7. State Ownership of Work Products. The State shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, installed, or delivered to the State under this Contract. The State shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all said work products. The Contractor shall furnish such information and data upon request of the State, in accordance with the Contract and applicable State law.

E.8. Performance Bond. Upon approval of the Contract by all appropriate State officials in accordance with applicable State laws and regulations, the Contractor shall furnish a performance bond in the amount equal to Two hundred fifty thousand dollars (\$ 250,000.00), guaranteeing full and faithful performance of all undertakings and obligations under this Contract for the initial Contract term and all extensions thereof. The bond shall be in the manner and form prescribed by the State and must be issued through a company licensed to issue such a bond in the State of Tennessee.

The Contractor shall obtain the required performance bond in form and substance acceptable to the State and provide it to the State no later than October 10, 2003. Failure to provide the performance bond prior to the deadline as required shall result in contract termination.

In lieu of a performance bond, a surety deposit, in the sum of to Two hundred fifty thousand dollars (\$ 250,000.00), may be substituted if approved by the State prior to its submittal.

E.9. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of *Tennessee Code Annotated*, Section 12-7-101, *et. seq.*, shall be printed unless a printing authorization number has been obtained and affixed as required by *Tennessee Code Annotated*, Section 12-7-103 (d).

E.10. Competitive Procurements. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or services. Such procurements shall be made on a competitive basis, where practical.

E.11. State Interest in Equipment—Uniform Commercial Code Security Agreement. The Contractor shall take legal title to all equipment and to all motor vehicles, hereinafter referred to as "equipment," purchased totally or in part with funds provided under this Contract, subject to the State's equitable interest therein, to the extent of its *pro rata* share, based upon the State's contribution to the purchase price. "Equipment" shall be defined as an article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition cost which equals or exceeds \$5,000.00.

As authorized by the provisions of the terms of the Tennessee Uniform Commercial Code—

Secured Transaction, found at Title 47, Chapter 9 of the *Tennessee Code Annotated*, and the provisions of the Tennessee Motor Vehicle Title and Registration Law, found at Title 55, Chapter 1 of the *Tennessee Code Annotated*, an intent of this Contract document and the parties hereto is to create and acknowledge a security interest in favor of the State in the equipment or motor vehicles acquired by the Contractor pursuant to the provisions of this Contract document. A further intent of this Contract document is to acknowledge and continue the security interest in favor of the State in the equipment or motor vehicles acquired by the Contractor pursuant to the provisions of this program's prior year Contracts between the State and the Contractor.

The Contractor hereto grants the State a security interest in said equipment. This agreement is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the equipment herein specified which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and the Contractor hereby grants the State a security interest in said equipment. The Contractor agrees that the State may file this Contract or a reproduction thereof, in any appropriate office, as a financing statement for any of the equipment herein specified. Any reproduction of this or any other security agreement or financing statement shall be sufficient as a financing statement. In addition, the Contractor agrees to execute and deliver to the State, upon the State's request, any financing statements, as well as extensions, renewals, and amendments thereof, and reproduction of this Contract in such form as the State may require to perfect a security interest with respect to said equipment. The Contractor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements the State may reasonably require. Without the prior written consent of the State, the Contractor shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said equipment, including replacements and additions thereto. Upon the Contractor's breach of any covenant or agreement contained in this Contract, including the covenants to pay when due all sums secured by this Contract, the State shall have the remedies of a secured party under the Uniform Commercial Code and, at the State's option, may also invoke the remedies herein provided.

The Contractor agrees to be responsible for the accountability, maintenance, management, and inventory of all property purchased totally or in part with funds provided under this Contract. The Contractor shall maintain a perpetual inventory system for all equipment purchased with funds provided under this Contract and shall submit an inventory control report which must include, at a minimum, the following:

- a. Description of the equipment;
- b. Manufacturer's serial number or other identification number, when applicable;
- c. Consecutive inventory equipment tag identification;
- d. Acquisition date, cost, and check number;
- e. Percentage of state funds applied to the purchase;
- f. Location within the Contractor's operations where the equipment is used;
- g. Condition of the property or disposition date if Contractor no longer has possession;
- h. Depreciation method, if applicable; and
- i. Monthly depreciation amount, if applicable.

The Contractor shall tag equipment with an identification number which is cross referenced to the equipment item on the inventory control report. The Contractor shall inventory equipment annually. The Contractor must compare the results of the inventory with the inventory control report and investigate any differences. The Contractor must then adjust the inventory control report to reflect the results of the physical inventory and subsequent investigation.

The Contractor shall notify the State, in writing, of any equipment loss describing reason(s) for the loss. Should the equipment be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the *pro rata* amount of the residual value at the time of loss based upon the State's original contribution to the purchase price.

The Contractor shall submit its inventory control report of all equipment purchased with the final invoice submitted under this Contract. This inventory control report shall contain, at a minimum, the requirements specified above for inventory control.

Upon termination of the Contract, where a further contractual relationship is not entered into, or at another time during the term of the Contract, the Contractor shall request written approval from the State for any proposed disposition of equipment purchased pursuant to this Contract. All equipment shall be disposed of in such a manner as parties may agree from among alternatives approved by Tennessee Department of General Services and in accordance with any applicable federal laws or regulations.

- E.12. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.

- E.13. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Contractor's Proposal
- c. The Request for Proposal and its associated amendments
- d. Technical Specifications provided to the Contractor
- e. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

- E.14. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

- E.15. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

- E.16. Public Funding Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Contractor relative to this Contract shall include the statement, "This project is funded under an agreement with the State of Tennessee." Any such notices by the Contractor shall be approved by the State.

- E.17. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.
- E.18. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.19. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.
- E.20. Public Accountability. If this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor agrees to display a sign stating:

"NOTICE: This Contractor is a recipient of taxpayer funding. If you observe an employee engaging in any activity which you consider to be illegal or improper, please call the State Comptroller's toll free hotline: 1-800-232-5454"

Said sign shall be displayed in a prominent place, located near the passageway(s) through which the public passes to receive State funded services.

- E.21. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

E.22. Date/Time Hold Harmless. As required by **Tennessee Code Annotated**, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.

E.23. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

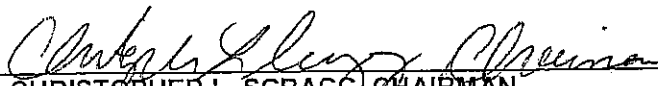
E.24. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in **Tennessee Code Annotated**, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.

E.25. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

IN WITNESS WHEREOF:

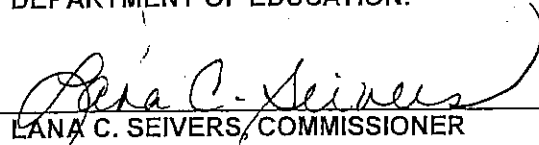
BUUSINESS INFORMATION GROUP, INC:


CHRISTOPHER L. SCRAGG, CHAIRMAN

Date

10/29/03

DEPARTMENT OF EDUCATION:

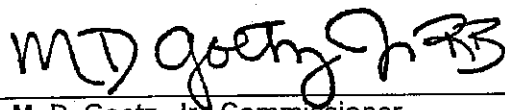

LANA C. SEIVERS, COMMISSIONER

Date

11/3/03

APPROVED:

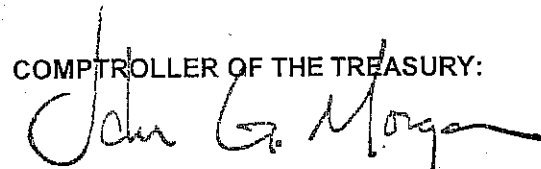
DEPARTMENT OF FINANCE AND ADMINISTRATION:


M. D. Goetz, Jr., Commissioner

Date

NOV 20 2003

COMPTROLLER OF THE TREASURY:


John G. Morgan, Comptroller of the Treasury

Date

11/21/03

ATTACHMENT 1

LIQUIDATED DAMAGES SCHEDULE

In the event of a Contractor Breach, the amounts listed below will be withheld by the State as Liquidated Damages.

Type of Service Breach

Penalty

- 1) Exigency Consulting Service/Technical Support \$100,000.00 per test Admin.
A breach in consulting service or technical support will result from inadequate Contractor-provided exigent service rendered in support of the test programs listed in Section A.
- 2) Software Development and support of existing applications as needed per test administration:

Faculty Student Data entry program	\$ 45,000.00 per test admin.
Online Ordering System	\$ 15,000.00 per test admin.
Field Processing Application for Gateway/End-of-Course	\$ 30,000.00 per test admin.
Competency Editing System	\$ 25,000.00 per test admin.
Demographic Validation Report	\$ 65,000.00 per test admin.
Report of Irregularity System	\$ 25,000.00 per test admin.
Special Education/ELL – TCAP Alt/ELL reporting	\$ 40,000.00 per test admin.
Pre-coded Header System for Achievement	\$ 25,000.00 per test admin.

A breach in software development /support services of existing web-based and client/server software applications used in the processing of State assessment tests will result from the Contractor's inability to achieve satisfactory implementation of the systems listed below per test administration. The systems must be completed, updated, operational and functional prior to the receipt of tests for processing, according to the table below.

Software Applications

Supported Test Programs

Faculty Student Data entry program

Accountability, Achievement

Online Ordering System

Competency, Achievement, TCAP Alt/ELL, Gateway, End of Course, Writing

Field Processing Application

Gateway, End of Course

Competency Editing Storage/Retrieval System

Competency

Demographic Validation Report

Achievement, TCAP Alt/ELL, Gateway, End-of-Course

Report of Irregularity System

Competency, Achievement, Gateway, End-of-Course

Special Education/ELL – TCAP Alt/ELL Application

TCAP ALT, TCAP ELL

Pre-coded Header System

Achievement, Gateway, End of Course, Accountability

ATTACHMENT 2

HISTORICAL TEST CYCLE QUANTITIES

The following frequencies represent historical data from the 02-03 school year and do not necessarily predict future school year test frequencies.

<u>TEST CYCLE</u>	<u>NUMBER OF STUDENTS TESTED</u>
Fall – (October) Competency	63,200
Fall – (December) Gateway	60,000
Fall – End-of-Course	33,000
Spring – (February) Competency	28,000
Spring – (March-April) TCAP Achievement	700,000
Spring – (March-April) TCAP Alt/ELL	3,500
Spring – End-of-Course	89,000
Spring – (May) Gateway	189,000
Spring – Accountability	700,000
Summer – (June) Competency	17,500
Summer – (July) Competency	14,700
Summer – End-of-Course	4,000
Summer – (July) Gateway	24,000